

45
52
IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

F I L E D
JUL 02 2013
CIRCUIT COURT CLERK
BY DeLish D.C.

**PARKWAY FOX, L.P., d/b/a PARKWAY
VILLAGE WEST,**

Plaintiff,

v.

**THE MASSACHUSETTS BAY
INSURANCE COMPANY,**

Docket No. CT-002822-B

JURY DEMAND

DIV VIII

Defendant.

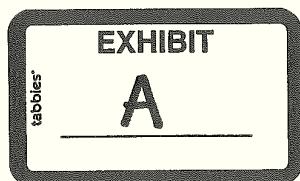
COMPLAINT

Plaintiff, Parkway Fox, L.P., d/b/a Parkway Village West ("Parkway") by its attorneys, Gilbert Russell McWherter PLC and Childress Duffy, Ltd., for its Complaint against Defendant, The Massachusetts Bay Insurance Group, Inc. ("Massachusetts Bay"), states as follows:

PARTIES, JURISDICTION AND VENUE

1. At all relevant times hereto, Parkway was and is a Texas Limited Partnership that owned and operated shopping centers in Shelby County, Tennessee, including but not limited to Parkway Village West, located at 3071-3149 S. Perkins Road and 4660 Knight Arnold Road, which shall hereafter be referred to as the "Insured Premises."

2. Massachusetts Bay is a Hanover Insurance Group company with its principle place of business in Worcester, Massachusetts. Massachusetts Bay is registered to do business in Tennessee and is engaged in the business of issuing property and casualty insurance policies within Tennessee, including Shelby County.



3. This Complaint originates as the result of a storm event that damaged buildings located at the Insured Premises, and Massachusetts Bay's refusal and denial to pay the full amount of Parkway's claim for the insurance proceeds.

COUNT I (Breach of Contract)

4. Massachusetts Bay issued to Parkway a policy of insurance, which was in effect from August 29, 2010, to August 29, 2011, covering the Insured Premises ("the Policy"). A copy of the Policy is attached as Exhibit "A."

5. Under the Policy, Massachusetts Bay agreed to pay for covered direct physical loss and damage to the Insured Premises, including, but not limited to, loss and damage caused by wind.

6. Parkway paid the premiums due on the Policy in a timely manner, and performed all of the duties and responsibilities required of it under the Policy, or alternatively, has been excused from performance by Massachusetts Bay's acts, representations and/or conduct.

7. While the Policy was in full force and effect, on or about April 4, 2011, Parkway suffered direct, physical loss of or damage to the Insured Premises due to wind and a storm (the "Loss").

8. Parkway promptly and properly made a claim to Massachusetts Bay for insurance benefits under the Policy, namely the costs to repair and/or replace the damage by the Loss, and fulfilled all other duties required of it under the Policy after discovery of the Loss.

9. Pursuant to the Policy, Massachusetts Bay has a contractual obligation to fully investigate and adjust the Loss, and pay the full amount of Parkway's covered losses, including the costs to repair and/or replace the damage, less applicable deductible.

10. On May 28, 2012, Massachusetts Bay advised that it was refusing and denying payment of the Loss.

11. Parkway has performed all conditions precedent to its right to recovery under the Policy, yet Massachusetts Bay has failed and refused to make payment to Parkway. Unable to resolve the claim outside of litigation, Parkway sought and retained counsel to assist in the bringing of this action.

12. Massachusetts Bay's refusal to pay the full amount of Parkway's loss is in breach of the Policy, and Massachusetts Bay is liable to Parkway for the full amount allowed by the Policy for the Loss.

13. Massachusetts Bay refused and continues to refuse to pay for all of the benefits under the Policy, including the full cost to repair and/or replace the wind damage to the Insured Premises, forcing Parkway to litigate.

14. Massachusetts Bay breached its contract with Parkway by:

- a. not promptly paying Parkway all benefits owed as a result of the covered Loss;
- b. not putting Parkway in the position it would have been in had it timely performed all of its contractual duties.

15. As a direct and proximate result of Massachusetts Bay's breach of contract, Parkway:

- a. suffered and will continue to suffer significant property damage;
- b. incurred and will incur in the future costs to repair and/or replace the property damage;
- c. suffered and will continue to suffer consequential damages;

- d. is entitled to an award of prejudgment interest, taxable costs, and investigatory fees; and
- e. incurred other expenses as a result of Massachusetts Bay's breach of contract.

WHEREFORE, Plaintiff, Parkway Fox L.P., demands judgment in its favor against Defendant, The Massachusetts Bay Insurance Company, as follows:

- A. For compensatory damages not to exceed \$1,500,000.00.
- B. For pre- and post- judgment interest; and
- C. For all costs incurred by Parkway as a result of this action; and
- D. For such other further and general relief as this Court deems just and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

GILBERT RUSSELL McWHERTER PLC



J. Brandon McWherter #21600
Clinton H. Scott #23008
101 N. Highland Ave.
Jackson, TN 38301
(731) 664-1340
(731) 664-1540 (fax)
bmcwherter@gilbertfirm.com
ccscott@gilbertfirm.com

CHILDRESS DUFFY, LTD.
Andrew M. Plunkett
(*to be admitted pro hac vice*)
500 N. Dearborn Street, Suite 1200
Chicago, Illinois 60610
(312) 494-0200
(312) 494-0202
aplunkett@childresslawyers.com

COST BOND

This firm stands as surety for costs in this cause.

GILBERT RUSSELL McWHERTER PLC


Clint Swope

EXHIBIT A



ZDD 2727001 06

Massachusetts Bay Insurance Company, 440 Lincoln Street, Worcester MA 01605
Commercial Line Policy
Common Declarations

Policy Number	Policy Period		Coverage Is Provided in the:	AE Agency Code
	From	To		
ZDD 2727001 06	08/29/2010	08/29/2011	Massachusetts Bay Insurance Company	1602320

Named Insured and Address :

PARKWAY FOX LP
 DBA PARKWAY VILLAGE WEST
 701 N POST OAK RD STE 515
 HOUSTON TX 77024

Agent :

ARTHUR J GALLAGHER RISK
 MANAGEMENT SERVICES INC
 PO BOX 1749
 SPRING TX 77383

Branch : Dallas Branch Office**Policy Period :** From 08/29/2010 To 08/29/2011

12:01 A.M. Standard Time at Your Mailing Address Shown Above.

Business Description: Shopping Center**Legal Entity :** Corporation

In Consideration of the premium, insurance is provided the Named Insured with respect to those premises described in the attached schedule(s) for which a specific limit of insurance is shown. This is subject to all terms of this policy including Common Policy Conditions. Coverage Parts, Forms and Endorsements may be subject to adjustment and/or a policy minimum premium.

Commercial Property Coverage	\$17,360.00
Commercial General Liability Coverage	\$5,062.00
Professional Liability Coverage	Not Covered
Commercial Inland Marine Coverage	Not Covered
Commercial Crime Coverage	Not Covered
Commercial Auto Coverage	Not Covered
Total Surcharges Premium	N/A
Additional Premium For Policy Minimum	N/A
** Total	\$22,422.00

**INCLUDES PREMIUM, IF ANY, FOR TERRORISM; REFER TO DISCLOSURE NOTICE

Counter signed _____ By _____

Account Bill/8-Pay W/Service Charge

0573



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Locations of All Premises You Own, Rent or Occupy

Location: 1

3071-3141 PERKINS ROAD &
4660 KNIGHT ARNOLD
Memphis TN
38118

Forms Applicable to all Coverage Parts:

*Asterisk denotes new or changed form

Form Number **Edition Date** **Description**

201-0475	06/89	Notice Inquires to PILR on info on Claim
* 401-1127	01/08	Notice - Disclosure of Premium - Acceptance of Coverage
401-1131	01/08	Terrorism Coverage Acceptance
401-1135	01/08	Terrorism Coverage Acceptance
* 401-1187	06/07	Commercial Property Coverage Part Multistate Revisions of Forms and Endorsements Advisory NTP
II. 00 03	09/07	Calculation of Premium
II. 00 17	11/98	Common Policy Conditions
II. 00 21	07/02	Nuclear Energy Liability Exclusion Endorsement (Broad Form)
II. 02 50	09/07	Tennessee Changes - Cancellation And Nonrenewal
II. 09 35	07/02	Exclusion of Certain Computer-Related Losses
II. 09 52	03/08	Cap On Losses From Certified Acts Of Terrorism
SI 3 00 03	06/05	Signature Page - Mass Bay

RECEIVED JUL - 6 2010

401-0 52 01/05

Page 2
Agent

Issued 06/25/2010

0574



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Commercial Property Coverage Part Declaration

	Total Property Premium	\$17,360.00
Coverages Provided:		
Insurance at the Described Premises applies only for the coverage shown below:		

LOC	BLDG	
1	1	Occupancy: Convenience Food Store
		Territory: 791
		Construction: Masonry Noncombustible
		Protection Class: 2

LOC	BLDG	Coverage:	Cause of Loss:	Premiums:
1	1	Building	Special	\$13,914.00
		Limit of Insurance:	\$8,977,280.00	
		Replacement Cost		
		Coinsurance:	100%	
		Agreed Value	Agreed Expiration: 08/29/2011	

Applicable Coverage Options

Agreed Amount

411-0542 01/05

Page 3
Agent

Issued 06/25/2010

0575



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Commercial Property Coverage Part Declaration

<u>LOC</u>	<u>BLDG</u>	<u>Coverage:</u>	<u>Cause of Loss:</u>	<u>Premiums:</u>
1	1	Contents	Special	\$68.00
		Limit of Insurance:	\$10,404.00	
		Replacement Cost		
		Coinsurance:	100%	
		Agreed Value	Agreed Expiration: 08/29/2011	

Applicable Coverage Options

Agreed Amount

<u>LOC</u>	<u>BLDG</u>	<u>Coverage:</u>	<u>Cause of Loss:</u>	<u>Premiums:</u>
1	1	Business Income	Special	\$1,561.00
		Limit of Insurance:	\$700,000.00	
		Coinsurance:	100%	

411-05 12 01/05

Page 4
Agent

Issued 06/25/2010

0576



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Commercial Property Coverage Part Declaration**LOC BLDG APPLICABLE DEDUCTIBLE**

1	1	Windstorm/Hail Deductible	\$5,000.00
		Theft Deductible:	\$5,000.00
		Other Deductible:	\$5,000.00

Additional Premium for Property Minimum:	N/A
---	------------

<u>Miscellaneous/Optional Property Coverages:</u>	<u>PREMIUM</u>
Property Broadening	\$400.00
<u>Boiler / Machinery / Equipment Breakdown</u>	\$1,317.00
Total Terrorism Premium	\$100.00

411-0542 01/05

Page 5
Agent

Issued 06/25/2010

05'7



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Forms Applicable to Property Coverage Parts:

*Asterisk denotes new or changed form

<u>Form Number</u>	<u>Edition Date</u>	<u>Description</u>
401-1185	08/08	Water Exclusion Endorsement Advisory Notice to Policyholders
411-0078	03/03	Property Special Broadening Endorsement
4E1-0038	11/04	Equipment Breakdown Coverage
4E1-0054	04/07	Equipment Breakdown NTP
C 3 00 10	06/07	Building and Personal Property Coverage Form
C 3 00 30	06/07	Business Income (and Extra Expense) Coverage Form
C 3 00 90	07/88	Commercial Property Conditions
C 3 01 40	07/06	Exclusion of Loss Due to Virus or Bacteria
C 3 10 30	06/07	Cause of Loss - Special Form
C 3 10 32	08/08	Water Exclusion Endorsement
C 3 12 18	06/07	Loss Payable Provisions

411-0142 01/05

Page 6
Agent

Issued 06/25/2010

0578



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Property Schedule of Additional Interest

Location: 1 Building: 1

Loss Payable

Farmers Ins. Grp Federal CU
C/O Bus. Ptners LLC &/or Assig
9301 Winetka
Chatsworth, CA 91311

411-0543 01/05

Page 7
Agent

Issued 06/25/2010

0519



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Commercial General Liability Coverage Part Declaration

Audit Frequency:	Not Auditible
Limits of Insurance:	
General Aggregate Limit	\$2,000,000
Products – Completed Operations are Included in the General Aggregate Limit	
Each Occurrence Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit, Any One Fire	\$100,000
Medical Expense Limit, Any One Person	\$5,000
General Liability Deductible:	
Total Advance Commercial General Liability Premium	\$5,062.00

Forms Applicable to General Liability Coverage Parts:

*Asterisk denotes new or changed form

<u>Form Number</u>	<u>Edition Date</u>	<u>Description</u>
--------------------	---------------------	--------------------

421-0022	12/90	Asbestos Liability Exclusion
421-0080	01/03	Commercial General Liability Special Broadening Endorsement
421-0729	05/09	Recording and Distribution of Material or Info in Violation of Law Excl Endt
		Advisory Notice to Policyholders
* 421-0738	12/07	2007 General Liability Multistate Forms Revision Advisory Notice to
		Policyholders
* CG 00 01	12/07	Commercial General Liability Coverage Form
* CG 00 68	05/09	Recording And Distribution of Material or Information In Violation of Law
		Exclusion
* CG 21 47	12/07	Employment - Related Practices Exclusion
* CG 21 62	09/98	Exclusion - Year 2000 Computer Related And Other Electronic Problems
		With Exception for BI on Your Premises
CG 21 67	12/04	Fungi or Bacteria Exclusion
CG 21 70	01/08	Cap On Losses From Certified Acts Of Terrorism
CG 21 76	01/08	Exclusion of Punitive Damages Related To a Certified Act of Terrorism
CG 21 96	03/05	Silica or Silica-Related Dust Exclusion



PARKWAY FOX LP

ZDD 2727001 06

ARTHUR J GALLAGHER RISK

Commercial General Liability Classification Schedule Declaration

<u>LOC</u>	<u>ST</u>	<u>TERR</u>	<u>CODE</u>	<u>SUBLINE</u>	<u>PREMIUM BASIS</u>	<u>PER</u> 1000 of Total Area	<u>RATE</u>	<u>ADVANCE PREMIUM</u>
1	TN	001	67635	334	151,070 Area		21.704	\$3,279.00

Products - Completed Operations are Included in the General Aggregate Limit

Shopping Centers buildings, or premises not occupied by the insured

<u>LOC</u>	<u>ST</u>	<u>TERR</u>	<u>CODE</u>	<u>SUBLINE</u>	<u>PREMIUM BASIS</u>	<u>PER</u> 1000 of Total Area	<u>RATE</u>	<u>ADVANCE PREMIUM</u>
1	TN	001	46606	334	175,000 Area		5.734	\$1,003.00

Products - Completed Operations are Included in the General Aggregate Limit

Parking public shopping centers maintained by lessee lessor's risk only

Miscellaneous/Optional General Liability Coverages

Advance Premium

General Liability Special Broadening Endorsement	\$725.00
Terrorism Premium	\$55.00

Additional Premium for Coverage Minimum:

N/A

Total Advance General Liability Premium

\$5,062.00

Subline: 334

Premises and Operations

421-0341 01/05

Page 9
Agent

Issued 06/25/2010

0581